

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-16333

B
P/S

In The
UNITED STATES COURT OF APPEALS
For The Second Circuit

IN RE

PENN CENTRAL COMMERCIAL PAPER
LITIGATION

ALEX SHULMAN,

Plaintiff,

-against-

GOLDMAN, SACHS & CO., et al.

Defendants.

SEATTLE-FIRST NATIONAL BANK,

Applicant.

APPELLANT'S APPENDIX

Keane & Butler
Attorneys for Seattle-First
National Bank
200 Park Avenue
New York, New York

Pollack & Singer
Liaison Counsel for Plaintiffs
61 Broadway
New York, New York 10006

Bogle, Gates, Dobrin
Wakefield & Long
Attorneys for Alex Shulman
14th Floor Norton Bldg.
Seattle, Washington 98104

Sullivan & Cromwell
Attorneys for Goldman, Sachs
& Co. and Individual Third
Party Defendants
48 Wall Street
New York, New York 10005

Simpson, Thacher & Bartlett
Attorneys for Manufacturers
Hanover Trust
One Battery Park Plaza
New York, New York 10004

White & Case
Attorneys for Dunn & Bradstreet
14 Wall Street
New York, New York 10005

Graubard, Moskovitz, McGoldrick
Dannett & Horowitz
Attorneys for Alex Shulman
345 Park Avenue
New York, New York 10022



PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

APPENDIX

	Page
Docket Entries (71 Civ. 1996)	1a
Docket Entries (72 Civ. 616)	3a
Notice of Motion	5a
Affidavit of Butler	8a
Proposed Intervention Complaint	16a
Exhibit A -Shulman I Complaint	41a
Exhibit B -Shulman I Goldman, Sachs Answer	54a
Exhibit C -Shulman II Complaint	58a
Exhibit D -Shulman II Third Party Complaint	70a
Exhibit E -Shulman II Goldman, Sachs Answer	79a
Opinion of Chief Judge Edelstein	83a

CIVIL DOCKET

UNITED STATES DISTRICT COURT

DOCKET ENTRIES

Jury demand date:

71 CIV. 1996

No. 100 Rev.

TITLE OF CASE

ATTORNEYS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

For plaintiff:

GRAUBARD, MOSKOVITZ DANNETT & HOROWITZ

345 Park Avenue,
N.Y.C., N.Y. 10022

X SHULMAN,

Plaintiff,

-against-

DEAN, SACHS & CO., ARTHUR C. BISHOP, JR.,
 GEORGE T. BOYER, MICHAEL B. COLES, ROBERT
 DANFORTH, GEORGE E. DOFF, RICHARD
 HENRY H. FOWLER, DONALD R. GALT,
 WILLIS L. GRANNON, JAMES P. GORDON,
 BEN A. HAGER, JAMES C. HENNING, JOHN C.
 KATSON, LEWIS J. KAUFMAN, H. FRIEDMAN
 KENDALL, II, GUSTAVE L. LEVY, PETER A.
 S. JAMES S. MARCUS, L. THOMAS MEELEY,
 RICHARD L. MENSCHER, ROBERT E. MENCHER,
 NILEY R. MILLER, ROBERT F. MUNCHIN,
 BEN D. ROBERTSON, CHARLES E. SALTZMAN,
 ARD A. SCHRADER, ALAN L. SPAIN, L. JAY
 TENENBAUM, ROSS E. TRAPHAGEN, JR., THOMAS
 WALTER, JR., JOHN L. WEINBERG, SIDNEY
 WEINBERG, JR., J. FRED WEINSTEIN, JR.,
 EDWIN H. WESTON, JOHN C. WHITEHEAD, ROBERT
 WILSON, and H. R. YOUNG,

For defendant:

Sullivan & Cromwell (for Goldman Sachs)
 48 Wall St. NY 10005 HA 2-8100

and for Menscher, Munchin, Saltzman,
 Schrader, Tenenbaum, Weinberg, Jr., Altschul,
 Danforth, Fowler, Krimendahl II, Levy,
 Marcus and Richard L. Menscher)
 48 Wall St. NY 10005 HA 2-8100

PENNSYLVANIA COMPANY, PENNSYLVANIA TRANSPORTATION CO.:

PENNSYLVANIA COMPANY: STUART T. SAUNDERS, DAVID C. EVAN:

JONATHAN O'HERRON and FEAT MARWICK MITCHELL & CO.

3rd Pty. Defts.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
mailed X	Clerk	5-5-71	GRAUBARD	15	-
		5-7-71	OSTERS	15	-
		5/17/71	Keane	5	-
mailed	Marshal	5/17/71	Will	5	-
		5/17/71	Will	5	-
of Action:	Docket fee				
DE TO CARGO.	Witness fees				
000					
arose at:	Depositions				

DOCKET ENTRIES

JUDGE EDELSTEIN

71 CIV. 199

DATE	PROCEEDINGS	Date Order Judgment No.
17-71	Filed summons with marshal's ret. Served Goldman, Sachs & Co. by Mr. Young on 5-10-71	
2-71	Filed ANSWER of Goldman, Sachs & Co. to complaint.	
2-71	Filed third party complaint and issued 3rd pty. summons.	S-C
11-71	Issued Additional Summons	
28-71	Filed ANSWER of Robert B. Menschel, Robert E. Mnuchin, Charles E. Saltzman, Edward A. Schrader, L. Jay Tenenbaum, Sidney J. Weinberg, Jr., Arthur G. Altschul, Robert S. Danforth, Henry H. Fowler, H. Frederick Krimendahl, II, Gustave L. Levy, Peter A. Levy, James S. Marcus and Richard L. Menschel, to complaint.	
3-71	Filed letter and order directing the transfer of this action to USDC., Eastern District of Penna., Philadelphia, Pa.	
3-71	Mailed entire file to USDC., Eastern Dist. of Penna. (XEROX COPY - originals to remain here to be heard by Judge Edelstein, J.)	
17-71	Filed letter acknowledging receipt of transferred portion of case by Eastern Dist. Penna.	
4-71	Filed Summons with Marshal's ret. Served. Penn Central Co., by Howard Goldstein, on 6-17-71 Penn Central Transportation Co., by Mr. Walsh on 6-8-71 Pennsylvania Co., by Tom Monteverde on 6-7-71 Stuart T. Saunders, by Mrs. Saunders on 7-1-71 David C. Bevan by Edward C. German on 8-17-71 Jonathan O'Herron, by Michael Baulmon on 6-7-71 Peat, Marwick, Mitchell & Co. by Mrs. Ziti, on 6-10-71	
28-74	Filed plttf's affdvt & notice of motion Re ^y Intervention- Ret. 2-6-74.	
28-74	Filed plttf's memorandum in support of motion for intervention or consolidation.	
74	Filed Memorandum of Goldman, Sachs & Co. in response to motion to intervene or consolidate.	
74	Filed Reply Memorandum in support of motion by Seattle First National Bank for Intervention or Consolidation.	
74	Filed Memorandum of A. Shulman in opposition to motion by Seattle -First National Bank for intervention or consolidation.	
1.74	Filed Notice of Appeal by Applicant Seattle First Nat'l Bank, from order dated 4/4/74. (mailed notice)	
4.74	Certified Record to the U.S.C.A.	
71	Filed complaint.	
71	Filed notice for assignment to J. Edelstein.	
4.74	Filed Opinion #40553 by Edelstein, Ch. J. Intervention is denied.	

CIVIL DOCKET
UNITED STATES DISTRICT COURT

DOCKET ENTRIES
Jury demand date:

CH. JUDGE EDELSTEIN
72 CIV. 616

No. 104 Rev.

TITLE OF CASE

ATTORNEYS

SHULMAN

VS

FILE-FIRST NATIONAL BANK - *def.*
MAN SACHS & CO., etc. - *3d party, def.*

72 PENN CENTRAL COMPANY
PENN CENTRAL TRANSPORTATION COMPANY
PENNSYLVANIA COMPANY
STUART T. SAUNDERS
DAVID C. BEVAN
JONATHAN O'HERRON
FEAT, MARWICK, MITCHELL & CO.
4th party defendants.

For plaintiff:

ROBERT E. MCINTYRE

DELBERT D. MILLER

THE FARMER FINCH

1476

*FLYING NUTS BLDG
MURKIN 3151*

For defendant:

DANIEL R. RITTER
DAVIS, WRIGHT ETC

4200 SEA 1ST BLDG,

on transfer from Western Dist. of Washington,
e, Wash. 98104 pur to Judicial Panel Conditional
er Order filed here 2/9/72.
n Dist. No. Civil Action No. 9760.
aid there.

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
mailed X	Clerk				
mailed	Marshal				
of Action:	Docket fee				
C. ACT. 1933034	Witness fees				
arose at:	Depositions				

DOCKET ENTRIES

SHULMAN VS. SEATTLE*FIRST NATIONAL BANK.

72 CIV. 616

PROCEEDINGS		Date Order Judgment No.
7-72	Papers originally filed in Western District of Washington, Seattle, Wash. 98104 together with a copy of the docket entries.	
7-72	Filed conditional Transfer order of the Judicial Panel, and a letter from the U.S.D.C. with a certified copy of opinion and order lifting the stay of execution - in their Civil Action No. 9760.	
7-72	Filed fourth party complaint and issued 4th party summons.	
7-72	Filed ANSWER of deft. Goldman, Sachs & Co. to 3rd party complaint	S&C
7-72	Filed letter from Keane, Butler & Green designating Thomas Butler, of Keane, Butler and Green, 598 Madison Ave., NY Tele. #753-3460 as counsel for Seattle First National Bank, (in the proceedings to be consolidated with West. Dist. of Washington's Civil Action No. 9760/71 - Multidistrict Litigation).	
7-72	Filed Affidavit of service of summons and fourth-party complaint upon attorneys.	
7-72	Filed order on Multi-District Litigation. Partial transferred to Eastern District of Pennsylvania. Above act on Xerox Copy of file transmitted of portion of case. retain at U.S.D.C. pursuant to order. (Certify Mail and Ret. Rec. Requested.) ret. Receipt 6/21/72.	
7-72	Filed in M.D.L. No. 56 - ANSWER of fourth-party deft. Stuart T. Saunders.	
7-72	Filed 3 4th party summons with marshal's ret. Served: Penn Central Co. by Mr. Goldstein on 3/8/72. Penn Central Transportation Co. by Joan Roden on 3/1/72. Pennsylvania Co. by Tom P. Monteverde on 2/29/72. Stuart T. Saunders by Mrs. Saunders on 3/21/72. David C. Bevan UNABLE TO SERVE Jonathan O'Herron by Reeder Fox on 2/29/72. Peat, Marwick, Mitchell & Co. by Joann Grilli, Secy. on 3/2/72.	
7-73	Filed Response to request for production of documents. by 3rd party deft. & 4th party plaintiff.	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

IN RE

PENN CENTRAL COMMERCIAL MDL 56A (DNE)
PAPER LITIGATION

-----x

ALEX SHULMAN,

Plaintiff,

-against-

71 Civ. 1996 (DNE)

GOLDMAN, SACHS & CO., et al.,

Defendants.

NOTICE OF MOTION

SEATTLE-FIRST NATIONAL BANK,

Applicant.

-----x

S I R S :

PLEASE TAKE NOTICE that upon the pleadings herein and the affidavit of Thomas A. Butler, sworn to on the 23rd day of January, 1974, and the Memorandum of Law submitted herewith, the undersigned will move this Court, at a motion part thereof, in Room 2104 of the United States Court House, Foley Square, New York, New York, on the 6th day of February, 1974, at 2:15 o'clock in the afternoon of that day, for an order

NOTICE OF MOTION

(i) granting the motion of Seattle-First National Bank to intervene as of right, pursuant to F.R.C.P. Rule 24(a)(2), as a plaintiff in Alex Shulman v. Goldman, Sachs & Co., et al., 71 Civ. 1996 (DNE); or, in the alternative,

(ii) permitting Seattle-First National Bank to intervene with the Court's permission, pursuant to F.R.C.P. Rule 24(b)(2), as a plaintiff in Alex Shulman v. Goldman, Sachs & Co., et al., 71 Civ. 1996 (DNE); or, in the alternative,

(iii) consolidating Alex Shulman v. Seattle-First National Bank, (W.D. Washington Civ. No. 9760) 72 Civ. 616 (DNE) with Alex Shulman v. Goldman, Sachs & Co., et al., 71 Civ. 1996 (DNE), pursuant to F.R.C.P. Rule 42(a); and

(iv) granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York
January 23, 1974

KEANE & BUTLER

By _____
A Member of the Firm
Attorneys for Defendant
and Third Party Plaintiff
Seattle-First National Bank
200 Park Avenue
New York, New York 10017
(212) 682-2247

NOTICE OF MOTION

To:

DANIEL A. POLLACK, ESQUIRE
POLLACK & SINGER
Liaison Counsel for Plaintiffs
61 Broadway
New York, New York 10006

RONALD E. MCKINSTRY, ESQUIRE
BOGLE, GATES, DOBRIN, WAKEFIELD & LONG
Attorneys for Alex Shulman
14th Floor Norton Building
Seattle, Washington 98104

WILLIAM PIEL, JR., ESQUIRE
SULLIVAN & CROMWELL
Attorneys for Goldman, Sachs & Co. and
Individual Third Party Defendants
48 Wall Street
New York, New York 10005

ROY L. REARDON, ESQUIRE
SIMPSON, THACHER & BARTLETT
Attorneys for Manufacturers Hanover Trust
One Battery Park Plaza
New York, New York 10004

WILLIAM B. ROZELL, ESQUIRE
WHITE & CASE
Attorneys for Dunn & Bradstreet
14 Wall Street
New York, New York 10005

PHILLIP KAZON, ESQUIRE
GRAUBARD, MOSKOVITZ, MCGOLDRICK
DANNETT & HOROWITZ
Attorneys for Alex Shulman
345 Park Avenue
New York, New York 10022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
IN RE

PENN CENTRAL COMMERCIAL MDL 56A (DNE)
PAPER LITIGATION

-----X
ALEX SHULMAN,

Plaintiff,

-against-

71 Civ. 1996
(DNE)

GOLDMAN, SACHS & CO., et al.,

Defendants.

AFFIDAVIT

SEATTLE-FIRST NATIONAL BANK,

Applicant.

-----X
COUNTY OF NEW YORK

ss.:

STATE OF NEW YORK

THOMAS A. BUTLER, being duly sworn,
deposes and says:

1. I am a member of the Bar of this Court and the firm of Keane & Butler, attorneys for applicant and movant, Seattle-First National Bank ("Seattle-First"). I have knowledge of the facts hereinafter set forth and am familiar with the proceedings heretofore had herein. This affidavit is made in support of the application of Seattle-First to intervene as of right, or with the Court's

AFFIDAVIT OF BUTLER

permission, as a plaintiff in Alex Shulman v. Goldman, Sachs & Co., et al. 71 Civ. 1996 (DNE) ("Shulman I") and in support of Seattle-First's motion, in the alternative, to consolidate Alex Shulman v. Seattle-First National Bank (W. D. Washington Civ. No. 9760) 72 Civ. 616 (DNE) ("Shulman II") with Shulman I. Both of these cases involve the same transaction with respect to the sale of the same Penn Central Transportation Company commercial paper by Goldman, Sachs & Co. ("Goldman, Sachs"). This motion is brought to effect a proper alignment of the parties and actions, to effect economies of judicial time and expense, and to protect the interests of the applicant.

2. On or about January 2, 1970, Seattle-First, acting on behalf of Alex Shulman, purchased from Goldman, Sachs a commercial paper note of Penn Central Transportation Company in the face amount of \$300,000, having a maturity date of July 6, 1970 ("the commercial paper note"). On June 21, 1970, Penn Central Transportation Company filed for reorganization. Repayment of the \$300,000

AFFIDAVIT OF BUTLER

commercial paper note was not made on July 6, 1970 nor has it been made to date.

3. On or about May 5, 1971, Alex Shulman commenced the within action, Shulman I, against Goldman, Sachs to recover the \$300,000 face value of the commercial paper note. Copies of the complaint and Goldman Sachs' answer thereto are attached hereto as Exhibits A and B, respectively.

4. The Shulman I complaint alleges that Seattle-First, acting on behalf of Alex Shulman, purchased the \$300,000 commercial paper note from Goldman, Sachs. (Exhibit A, ¶8) The complaint charges Goldman, Sachs with making misstatements of material facts and omitting to make statements of material facts in connection with the commercial paper transaction. (Exhibit A, ¶¶10 and 11) Goldman, Sachs, in its answer, asserts that plaintiff had full knowledge of all material facts. (Exhibit B, ¶12) No relief is sought against Seattle-First in the Shulman I complaint.

5. On or about June 16, 1971, Alex Shulman commenced Shulman II in the United States District Court for the Western District of Washington seeking

AFFIDAVIT OF BUTLER

to recover the \$300,000 face value of the commercial paper note from Seattle-First. Attached hereto as Exhibit C, is a copy of that complaint.

6. The Shulman II complaint is substantially identical with the Shulman I complaint, charging Seattle-First with the exact same misstatements and omissions of material facts which Alex Shulman alleges as against Goldman, Sachs in the Shulman I complaint. (Compare Exhibit A, ¶¶10 and 11 with Exhibit C, ¶¶10 and 11) The commercial paper note and the commercial paper transaction which are the subject of Shulman II are the same note and transaction which are involved in Shulman I.

7. Thereafter, Seattle-First asserted a claim over in Shulman II against Goldman, Sachs. Copies of Seattle-First's third party complaint and Goldman, Sachs' answer thereto are attached as Exhibits D and E, respectively.

8. Seattle-First's third party complaint charges Goldman, Sachs with the same misstatements and omissions of material fact which are alleged as against Seattle-First in the Shulman II complaint and which are alleged as against Goldman, Sachs in

AFFIDAVIT OF BUTLER

the Shulman I complaint. (Compare Exhibit D, ¶¶7, 8 and 9 with Exhibits A and C, ¶¶10 and 11) Goldman, Sachs, in its answer to Seattle-First's third party complaint, asserts that Seattle-First had full knowledge of all material facts. (Exhibits E, ¶11)

9. Seattle-First, in its proposed complaint in connection with this motion to intervene, sues upon the very same commercial paper note and commercial paper transaction which are the subject of Shulman I and Shulman II. Seattle-First predicates the liability of Goldman, Sachs on the same set of facts and on, essentially, the same violations of federal and state laws and the common law as are involved in Shulman I and Seattle-First's claim over in Shulman II.

10. By order dated April 9, 1971, the Judicial Panel on Multidistrict Litigation ("the Panel") transferred several other actions involving the purchase of Penn Central Transportation Company commercial paper from Goldman, Sachs to the Southern District of New York, assigning Chief Judge David N. Edelstein to conduct coordinated pretrial proceedings. On February 7, 1972, the Panel transferred

AFFIDAVIT OF BUTLER

Shulman II to Chief Judge Edelstein to be consolidated with the other commercial paper cases for coordinated pretrial proceedings. By letter dated November 28, 1973, Chief Judge Edelstein informed the Panel that all coordinated discovery had been completed and he suggested that the Panel consider the remand of the consolidated actions. Thereafter, on December 13, 1973, the Panel issued a conditional remand order with respect to Shulman II. Seattle-First has opposed remand of Shulman II at this time in order to move to intervene as a plaintiff in Shulman I or to consolidate Shulman II with Shulman I.

11. Seattle-First seeks to intervene as a plaintiff in Shulman I as of right because it has an interest in the subject matter of Shulman I. Seattle-First has an interest in both the commercial paper transaction and the commercial paper note which are involved in Shulman I as a result of its participation as agent for Alex Shulman in effecting the commercial paper transaction. Seattle-First's ability to protect its interest will be impaired unless it is permitted to intervene

AFFIDAVIT OF BUTLER

because the principles of stare decisis and estoppel may adversely affect its claim over against Goldman, Sachs in Shulman II if Goldman, Sachs should prevail in Shulman I. Neither Alex Shulman nor Goldman, Sachs can or do represent Seattle-First's interest in Shulman I.

12. Seattle-First seeks to intervene as a plaintiff in Shulman I with the Court's permission on the grounds that Seattle-First's intervention claim and Shulman I involve common questions of law and fact. Both involve the same commercial paper note and the same commercial paper transaction. In both the substantive allegations are the same; any difference between Seattle-First's proposed complaint and the Shulman I complaint being attributable to differences of style rather than substance. Intervention would not result in any delay in trying Shulman I nor would it prejudice the parties to Shulman I. Seattle-First has been involved in all pretrial discovery proceedings to date and is prepared to go to trial at the earliest date convenient to the parties and the Court.

13. Seattle-First, in the alternative,

AFFIDAVIT OF BUTLER

seeks to have Shulman II consolidated with Shulman I on the basis that both actions involve common questions of law and fact. Both involve the same commercial paper note and the same commercial paper transaction. Consolidating these actions would result in a substantial savings of time and expense to the parties and the courts. It would also expedite the final resolution of the controversy among the parties to both actions while avoiding prejudice to the rights of any of the parties.

14. No request for the relief requested herein has previously been made.

Dated: New York, New York
January 23, 1974

THOMAS A. BUTLER

Sworn to before me this
23rd day of January, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ALEX SHULMAN

and

SEATTLE-FIRST NATIONAL BANK, a national
banking association,

Plaintiffs,

-against-

GOLDMAN, SACHS & CO., ARTHUR G. ALTSCHUL,
GEORGE T. BOYER, MICHAEL H. COLES, ROBERT
S. DANFORTH, GEORGE E. DOTY, RICHARD J.
FAY, HENRY H. FOWLER, DONALD R. GANT
CHARLES L. GRANNON, JAMES P. GORTER,
PETER A. HAGER, JAMES C. HEMPHILL,
JOHN C. JAMISON, LEWIS J. KAUFMAN,
H. FREDERICK KRIMENDAHL, II, GUSTAVE
L. LEVY, PETER A. LEVY, JAMES S. MARCUS,
L. THOMAS MELLY, RICHARD L. MENSCHER,
ROBERT B. MENSCHER, STANLEY R.
MILLER, ROBERT E. MUNCHIN, JAMES D.
ROBERTSON, CHARLES E. SALTZMAN, EDWARD
A. SCHRADER, ALAN L. STEIN, L. JAY
TENENBAUM, ROSS E. TRAPHAGEN, JR.,
THOMAS B. WALKER, JR., JOHN L. WEINBERG,
SIDNEY J. WEINBERG, JR., J. FRED
WEINTZ, JR., LEWIS M. WESTON, JOHN C.
WHITEHEAD, ROBERT G. WILSON, and
H. R. YOUNG,

PROPOSED
INTERVENTION
COMPLAINT
71 Civ. 1996
(DNE)

Defendants.

-----x

Plaintiff, Seattle-First National Bank, for
its complaint alleges:

PROPOSED INTERVENTION COMPLAINT

JURISDICTION

1. The jurisdiction of this Court is based upon Section 22(a) of the Securities Act of 1933 (15 USC §77v(a)), Section 27 of the Securities Exchange Act of 1934 (15 USC § 78aa) and diversity of citizenship.

2. This action arises under Section 12(2) and 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934, and the Investment Advisers Act of 1940, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder; under Section 8-306 of the UCC; Sections RCW 21.20.010 and RCW 21.20.430 of the Securities Act of Washington; and the common law.

PARTIES

3. Seattle-First National Bank ("Bank") is a national banking association with its headquarters in Seattle, Washington.

4. Upon information and belief, plaintiff Alex Shulman is a citizen and resident of the State of Washington.

5. The individual defendants are, and at all material times were, general partners in the

PROPOSED INTERVENTION COMPLAINT

firm of Goldman, Sachs & Co.

6. Defendant Goldman, Sachs & Co. ("Goldman, Sachs"), a member of the New York Stock Exchange and the National Association of Securities Dealers, is a partnership organized under the laws of the State of New York with its principal place of business at 55 Broad Street, New York, New York and is engaged primarily in the business of investment banking, underwriting and, as a broker-dealer registered with the Securities and Exchange Commission, dealing in the offer and sale of securities (including commercial paper) to the public, for its own account and for the accounts of others.

7. The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars (\$10,000).

8. On or about January 2, 1970, plaintiff, acting as agent for Alex Shulman, purchased a note of the Penn Central Transportation Company in the face amount of \$300,000 maturing July 6, 1970.

9. In purchasing the aforesaid note, plaintiff was acting solely at the direction of Alex Shulman, and solely upon information supplied

PROPOSED INTERVENTION COMPLAINT

to it by Goldman, Sachs from its Los Angeles, California, office and that it neither did, nor undertook to, exercise its judgment with respect to the quality of the security. Plaintiff believes that it acted solely as a conduit for the purchase of the note.

FIRST CAUSE OF ACTION

10. From on or about November 1, 1969, to on or about June 20, 1970, Goldman, Sachs acting from and within the Southern District of New York, directly or indirectly, sold, induced or caused the sale or supplied for sale on the open market to the public and to plaintiff and solicited and induced purchases by the public and by plaintiff of and otherwise acted as underwriter for more than eighty million dollars of securities in the form of commercial paper (in this case promissory notes) of Penn Central Transportation Company ("Penn Central").

11. Goldman, Sachs, acting as principal, offered and sold on or about January 2, 1970, to plaintiff a promissory note of Penn Central in the face amount of \$300,000 due on July 6, 1970.

PROPOSED INTERVENTION COMPLAINT

12. On or about June 21, 1970, Penn Central filed a petition for reorganization pursuant to Section 77 of the Bankruptcy Act. Penn Central is, at the date hereof, still in bankruptcy, and the Penn Central promissory note purchased by plaintiff was not redeemed or otherwise paid at its maturity date and has not been redeemed or otherwise paid as of the date hereof, although duly presented for payment by the plaintiff. The plaintiff has not received any income on said promissory note.

13. At all relevant times, Goldman, Sachs was the investment banking firm which regularly handled Penn Central's promissory notes, was the principal or only dealer in such promissory notes and was the leading underwriter, investment banker and broker-dealer for Penn Central and a confidential financial advisor to Penn Central. In such capacity, Goldman, Sachs had access to information concerning Penn Central and had notice or knowledge of, or in the exercise of reasonable diligence could and should have known all material facts concerning Penn Central's issuance of promissory notes and the management, operation, financial dealings, financial condition and prospects of Penn Central.

PROPOSED INTERVENTION COMPLAINT

14. At all times relevant hereto, Goldman, Sachs held itself out to the public and to plaintiff as having expertise, skill and knowledge with respect to promissory notes of corporate issuers generally and in particular with respect to the promissory note of Penn Central, and Goldman, Sachs induced reliance by plaintiff on its claimed expertise, knowledge and skill, and plaintiff did in fact rely thereon to its detriment.

15. At all times relevant hereto, Goldman, Sachs directly and indirectly received commissions, discounts and other remuneration from the sale and distribution of the promissory notes of Penn Central or other financial interests in such sale or distribution.

16. In connection with and in the course of said sales, Goldman, Sachs omitted to state to plaintiff material facts: (i) which Goldman, Sachs knew or in the exercise of reasonable diligence could and should have known and (ii) which were necessary in order to make the statements made by Goldman, Sachs to plaintiff, in the light of the circumstances under which they were made, not

PROPOSED INTERVENTION COMPLAINT

misleading. Among the material facts which Goldman, Sachs omitted to state to plaintiff were:

- (a) that the commercial paper of Penn Central was not prime quality commercial paper;
- (b) that the National Credit Office ("NCO") continued to rate Penn Central's commercial paper as prime, after February 5, 1970, at the instance of and as a result of statements made to NCO by Goldman, Sachs;
- (c) that NCO continued to rate Penn Central's commercial paper as prime, after February 5, 1970, only because Goldman, Sachs continued to sell Penn Central's commercial paper;
- (d) that Penn Central had for some time been facing severe cash shortages and difficulties in obtaining financing to meet its operating expenses, improvement costs and debt maturities;
- (e) that for some time Penn Central had been unable to obtain long-term financing, and had, since at least as early as 1968,

PROPOSED INTERVENTION COMPLAINT

become almost completely dependent upon short-term financing, and had no present prospects for obtaining long-term financing;

(f) Penn Central was using the proceeds from the sales of its promissory notes to reimburse its treasury for past capital expenditures and to refinance its maturing debt rather than to finance short-term needs and for current operating expenses;

(g) Penn Central was sustaining extraordinarily large and rapidly increasing operating losses and working capital deficits;

(h) that Penn Central had already mortgaged or pledged virtually all of its assets to its bank creditors and other creditors, and that Penn Central had no assets to pledge or otherwise use to obtain further loans or financing or to cover or meet its commercial paper obligations;

PROPOSED INTERVENTION COMPLAINT

(i) that during the autumn of 1969 Goldman, Sachs had participated in an application by Penn Central to the Interstate Commerce Commission for approval of the issuance of additional promissory notes, and the Interstate Commerce Commission, in an order dated October 29, 1969, expressed serious concern over Penn Central's reliance on short-term financing to finance capital expenditures and to refinance maturing long-term debt, and stated that Penn Central "had a deficit working capital situation" as of June 30, 1969 which could be expected to worsen if reliance on short-term financing was increased, and expressed concern over Penn Central's exhaustion of short-term credit which could expose it to "a serious crisis in the event of an economic squeeze";

(j) that Penn Central did not have firm commitments by commercial banks to assure that it would have sufficient funds to redeem its outstanding commercial paper

PROPOSED INTERVENTION COMPLAINT

at maturity, and that Penn Central did not have bank lines of credit sufficient for that purpose;

(k) that Goldman, Sachs had requested Penn Central to increase its bank lines of credit to provide sufficient funds to redeem its outstanding commercial paper at maturity;

(l) that Penn Central would not and could not obtain such additional bank lines of credit;

(m) that Penn Central had been unable to get additional lines of credit from American banks and had been forced to seek credit from European banks;

(n) that assets which Goldman, Sachs relied upon in determining that Penn Central was a credit worthy issuer were pledged, encumbered or otherwise unavailable to Penn Central to use to repay its commercial paper notes;

PROPOSED INTERVENTION COMPLAINT

- (o) that Goldman, Sachs was the investment banker and confidential financial advisor to Penn Central or its parent or subsidiary or affiliated companies, and that it otherwise had obligations and loyalties to Penn Central which conflicted with its obligations, loyalties and duties to Seattle-First National Bank;
- (p) that, contrary to established practice and custom in the commercial paper industry, and contrary to their implied and express representations to Seattle-First National Bank, Goldman, Sachs had no intention of repurchasing the Penn Central commercial paper which it was selling;
- (q) that Jonathan O'Herron, vice-president of finance for Penn Central, told Goldman, Sachs that Penn Central would be in a very tight cash position in the first quarter of 1970;

PROPOSED INTERVENTION COMPLAINT

(r) that Penn Central did not increase its bank lines of credit to support the increase of commercial paper outstanding from \$150 million to \$200 million;

(s) that Goldman, Sachs requested that Penn Central convert \$50 million of its bank lines of credit to demand lines;

(t) that a leading railroad banking firm, which was also an important holder of Penn Central commercial paper for its own account and a lending bank to Penn Central, had dropped the said commercial paper from its approved list for purchase;

(u) that Goldman, Sachs knew that Penn Central was carrying \$100 million of its commercial paper on its books as long-term debt;

(v) that as a result of the announcement of the 1969 year-end Penn Central figures, Goldman, Sachs requested a meeting with Penn Central;

(w) that, on or about February 6, 1970,

PROPOSED INTERVENTION COMPLAINT

Goldman, Sachs learned that Penn Central could not get additional bank lines of credit;

(x) that, on or about February 6, 1970, Goldman, Sachs learned that Penn Central was budgeting for a \$56 million loss for 1970;

(y) that, on or about February 6, 1970, Goldman, Sachs learned that Penn Central would have a cash requirement of \$226 million for 1970;

(z) that, on or about February 6, 1970, Penn Central told Goldman, Sachs that although the official budget showed a \$56 million loss, the management target for the railroad showed a loss of a maximum of \$23 million for 1970;

(aa) that, Goldman, Sachs in evaluating Penn Central's creditworthiness was relying upon Pennsylvania Company's \$900 million in securities, the large real estate holdings and the magnitude of the

PROPOSED INTERVENTION COMPLAINT

railroad itself;

(bb) that Goldman, Sachs did not evaluate or investigate the assets upon which it based its judgment as to the creditworthiness of Penn Central;

(cc) that, on or about February 6, 1970, Goldman, Sachs insisted that Penn Central buy back from Goldman, Sachs \$10 million of said commercial paper which Goldman, Sachs was carrying in its inventory;

(dd) that Penn Central did in fact repurchase from the inventory of Goldman, Sachs \$10 million of said commercial paper;

(ee) that, to accomplish the repurchase from Goldman, Sachs of \$10 million (\$10,000,000.00) of said commercial paper, Penn Central had to use its lines of bank credit, thereby reducing even further the lines of credit available for backing the said commercial paper held by the public;

(ff) that, on or about February 25, 1970, Goldman, Sachs reduced its Penn Central

PROPOSED INTERVENTION COMPLAINT

commercial paper inventory to zero;

(gg) that, on or about March 23, 1970, Jonathan O'Herron of Penn Central told Goldman, Sachs that Penn Central's first quarter figures would look terrible;

(hh) that, on or about April 14, 1970, Jonathan O'Herron told Goldman, Sachs that Penn Central's first quarter losses would be "lousy" and, in fact "staggering" and that Penn Central's cash position was "in very serious shape";

(ii) that, on or about April 14, 1970, Robert Wilson, the partner in charge of Goldman, Sachs' commercial paper department, recommended that Goldman, Sachs stop offering for sale Penn Central commercial paper;

(jj) that, on or about April 14, 1970, Goldman, Sachs learned that Penn Central's real estate was encumbered by several layers of mortgages;

(kk) that Goldman, Sachs continued to sell

PROPOSED INTERVENTION COMPLAINT

Penn Central commercial paper after Goldman, Sachs had received information about the financial condition of Penn Central which should have raised serious questions as to the safety of an investment in Penn Central commercial paper;

(ll) that Goldman, Sachs was selling Penn Central commercial paper on the basis of Penn Central's 1968 figures;

(mm) that on numerous occasions officers of Penn Central made statements to Goldman, Sachs which later proved to be untrue and Goldman, Sachs, under these circumstances, should have inquired and investigated into these matters;

(nn) that Goldman, Sachs had made little or no or inadequate independent investigation of the financial condition and affairs of Penn Central and was not continually reviewing the same either to ascertain whether the commercial paper

PROPOSED INTERVENTION COMPLAINT

was prime quality or otherwise to evaluate the advisability of purchase of said commercial paper by Seattle-First National Bank;

(oo) that Goldman, Sachs did not disclose the above facts to purchasers of Penn Central commercial paper.

17. Goldman, Sachs made the foregoing untrue statements of material facts and omitted to state such material facts with the intention of inducing plaintiff's reliance thereon in purchasing said Penn Central promissory note.

18. Plaintiff did not know and in the exercise of reasonable care could not have known of such untruths and omissions. Plaintiff believed that Goldman, Sachs had made no such untrue statements or omissions. Plaintiff believed Goldman, Sachs' statements were true and complete, and was induced thereby to purchase the Penn Central promissory note.

19. This action is brought within one year after the discovery of the untrue statements and omissions herein alleged or after such discovery

PROPOSED INTERVENTION COMPLAINT

should have been made by the exercise of reasonable diligence, and within three years after the sale of the promissory note upon which this action is based.

20. Goldman, Sachs, in violation of Section 12(2) of the Securities Act of 1933 (15 USC § 77 1), offered and sold said promissory note to plaintiff by the use of means or instruments of transportation or communication in interstate commerce or of the mails, by means of oral communications, which included, unknown to plaintiff, untrue statements of material facts or omissions to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading.

21. Plaintiff hereby tenders to Goldman, Sachs the Penn Central promissory note purchased from Goldman, Sachs and demands rescission of the sale of said note and restitution and repayment by Goldman, Sachs of all consideration paid for such notes, with interest from July 6, 1970, on the purchase price of said note.

PROPOSED INTERVENTION COMPLAINT

SECOND CAUSE OF ACTION

22. Plaintiff realleges paragraphs 1 through 19 and 21.

23. Plaintiff relied on Goldman, Sachs' statements as true and complete and plaintiff was induced thereby to purchase the Penn Central promissory notes from Goldman, Sachs.

24. Goldman, Sachs, in violation of Section 17(a) of the Securities Act of 1933 (15 USC § 77q(a)), and the rules and regulations promulgated thereunder, offered and sold said promissory note to plaintiff by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails thereby directly or indirectly (i) employing a device, scheme, or artifice to defraud plaintiff, or (ii) obtaining money from plaintiff by means of untrue statements of material facts and omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (iii) engaging in transactions, practices or a course of business which operated as a fraud or deceit on plaintiff.

PROPOSED INTERVENTION COMPLAINT

THIRD CAUSE OF ACTION

25. Plaintiff realleges paragraphs 1 through 19, 21 and 23.

23. The said untrue statements and omissions were material and were made by Goldman, Sachs with knowledge of their falseness and incompleteness and were otherwise recklessly, knowingly, and fraudulently made.

27. By reason of the foregoing, Goldman, Sachs in violation of Section 10(b) of the Securities Exchange Act of 1934 (15 USC § 78j(b)) and the Investment Advisors Act of 1940 and the rules and regulations promulgated thereunder, offered and sold said promissory note to plaintiff by the use of means or instrumentalities of interstate commerce or of the mails, thereby directly or indirectly (i) employing a device, scheme or artifice to defraud plaintiff, or (ii) making untrue statements of material facts to plaintiff and omitting to state to plaintiff material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or (iii) engaging in acts, practices

PROPOSED INTERVENTION COMPLAINT

or a course of business which operated as a fraud or deceit on plaintiff.

FOURTH CAUSE OF ACTION

28. Plaintiffs reallege paragraphs 1 through 19, 21, 23 and 26.

29. Goldman, Sachs in violation of Section RCW 21.20.010 and RCW 21.20.430 of the Securities Act of Washington used the foregoing acts or practices to induce or promote the issuance, distribution, exchange, sale, negotiation or purchase of the said promissory note of Penn Central to or by plaintiff within and from Washington, so as to constitute:

(a) Fraud, deception, concealment, suppression and false pretenses; or

(b) Promises and representations as to the future which were beyond reasonable expectation and unwarranted by existing circumstances; or

(c) Representations or statements which were false, where Goldman, Sachs (i) knew the truth; or (ii) with reasonable effort could have known the truth; or (iii) made no reasonable effort

PROPOSED INTERVENTION COMPLAINT

to ascertain the truth; or (iv) did not have knowledge concerning the representations or statements made.

FIFTH CAUSE OF ACTION

30. Plaintiff realleges paragraphs 1 through 18, 21, 23 and 26.

31. The aforesaid untrue statements and omissions were intentionally, knowingly, recklessly and fraudulently made by Goldman, Sachs to induce plaintiff to rely on its statements as true and complete in all respects and in reliance thereon to purchase said promissory note of Penn Central to the detriment of plaintiff and for the financial benefit of Goldman, Sachs.

32. By reason of the foregoing, Goldman, Sachs violated the common law rights of plaintiff.

SIXTH CAUSE OF ACTION

33. Plaintiff realleges the allegations contained in paragraphs 1 through 18, 21, 23, 26 and 31.

34. At all times hereinmentioned, Goldman, Sachs was a broker with respect to Penn Central commercial paper.

PROPOSED INTERVENTION COMPLAINT

35. Plaintiff purchased the promissory note for \$300,000.

36. In selling the note to plaintiff, Goldman, Sachs warranted to plaintiff, pursuant to UCC 8-306, that the transfer of the promissory note was effective and rightful; and that the security was genuine and was not materially altered; and that Goldman, Sachs knew no fact which might impair the validity of the note.

37. Plaintiff relied upon said warranties of Goldman, Sachs in purchasing the promissory note from Goldman, Sachs.

38. Goldman, Sachs breached said warranties in that prior to, contemporaneous with, and after the sale of the promissory note, Goldman, Sachs knew facts which might impair the validity of the note.

39. The promissory note was not worth \$300,000, but was, in fact, valueless.

SEVENTH CAUSE OF ACTION

40. Plaintiff realleges the allegations in paragraphs 1 through 18, 21, 23, 26, 31, 34, 35, 37 and 39.

PROPOSED INTERVENTION COMPLAINT

41. It was the custom and practice of Goldman, Sachs to repurchase from a customer commercial paper which it sold to such customer.

42. Plaintiff was aware of this action and practice and purchased the aforesaid note with reference to this custom and practice which was an implied term of the contract of sale.

43. Goldman, Sachs breached its agreement to repurchase said note when it refused to repurchase the note when it was tendered to Goldman, Sachs by purchaser.

WHEREFORE, plaintiff, Seattle-First National Bank, prays for judgment against defendant, Goldman, Sachs & Co., on behalf of Alex Shulman;

(a) rescinding the sale by defendant to the plaintiff of the said commercial paper of Penn Central and directing that defendant pay to the plaintiff the amount paid by the plaintiff to defendant for said commercial paper, with interest thereon; or in the alternative;

(b) awarding the plaintiff damages in the sum of \$300,000, with interest thereon; and

PROPOSED INTERVENTION COMPLAINT

(c) directing defendant to pay to the plaintiff the costs, disbursements and expenses of this action; and

(d) granting such other and further relief as the Court may deem just and proper.

Plaintiff demands a trial by jury of this cause.

Dated: New York, New York
January 21, 1974

KEANE & BUTLER

By _____
A Member of the Firm
Attorneys for Plaintiff
Seattle-First National Bank
200 Park Avenue
New York, New York 10017
(212) 682-2247

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ALEX SHULMAN,

Plaintiff,

-against-

File No.

COMPLAINT

PLAINTIFF DEMANDS
TRIAL BY JURY

GOLDMAN, SACHS & CO., ARTHUR G.
ALTSCHUL, GEORGE T. BOYER, MICHAEL
H. COLES, ROBERT S. DANFORTH,
GEORGE E. DOTY, RICHARD J. FAY,
HENRY H. FOWLER, DONALD R. GANT,
CHARLES L. GRANNON, JAMES P.
GORTER, PETER A. HAGER, JAMES C.
HEMPHILL, JOHN C. JAMISON, LEWIS
J. KAUFMAN, H. FREDERICK
KRIMENDAHL, II, GUSTAVE L. LEVY,
PETER A. LEVY, JAMES S. MARCUS, L.
THOMAS MELLY, RICHARD L. MENSCHER,
ROBERT B. MENSCHER, STANLEY R.
MILLER, ROBERT E. MUNCHIN, JAMES D.
ROBERTSON, CHARLES E. SALTZMAN,
EDWARD A. SCHRADER, ALAN L. STEIN,
L. JAY TENENBAUM, ROSS E. TRAPHAGEN,
JR., THOMAS B. WALKER, JR., JOHN
L. WEINBERG, SIDNEY J. WEINBERG, JR.,
J. FRED WEINTZ, JR., LEWIS M. WESTON,
JOHN C. WHITEHEAD, ROBERT G. WILSON,
and H. R. YOUNG,

Defendants.

-----x

Plaintiff, for his complaint herein, by his
attorneys, Graubard Moskovitz McGoldrick Dannett &
Horowitz, alleges (on information and belief, except
as to Paragraphs 1, 4, 5, 6, 8, 12, 14, 17 and 19)

EXHIBIT A

SHULMAN I - COMPLAINT

as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a citizen and resident of the State of Washington.
2. Defendant Goldman, Sachs & Co. ("Goldman, Sachs") is a partnership, organized and existing under the laws of the State of New York, engaged in the business of investment banking, underwriting and dealing in securities and commercial paper, is registered with the Securities and Exchange Commission as a broker-dealer, is a member of the New York Stock Exchange and the National Association of Securities Dealers and has its principal place of business at 55 Broad Street, New York, New York.
3. Defendants Arthur G. Altschul, George T. Boyer, Michael H. Coles, Robert S. Danforth, George E. Doty, Richard J. Fay, Henry H. Fowler, Donald R. Gant, Charles L. Grannon, James P. Gorter, Peter A. Hager, James C. Hemphill, John C. Jamison, Lewis J. Kaufman, H. Frederick Krimendahl, II, Gustave L. Levy, Peter A. Levy, James S. Marcus, L. Thomas Melly, Richard L. Menschel, Robert B. Menschel, Stanley R. Miller, Robert E. Munchin, James D. Robertson, Charles

EXHIBIT A

SHULMAN I - COMPLAINT

E. Saltzman, Edward A. Schrader, Alan L. Stein, L. Jay Tenenbaum, Ross E. Traphagen, Jr., Thomas B. Walker, Jr., John L. Weinberg, Sidney J. Weinberg, Jr., J. Fred Weintz, Jr., Lewis M. Weston, John C. Whitehead, Robert G. Wilson, and H. R. Young are general partners of Goldman, Sachs.

4. Jurisdiction of this court over this action is based upon Section 22(a) of the Securities Act of 1933 (15 U.S.C. Section 77v(a)) and Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. Section 78aa) and the principles of pendent jurisdiction.

5. This action arises under Section 17(a) of the Securities Act of 1933 (15 U.S.C. Section 77g (a)), and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78j and 78o (c)), and the rules and regulations of the Securities and Exchange Commission promulgated thereunder; this action also arises under Sections 25400, 25401, 25402, 25500, 25501 and 25502 of the Corporations Code of the State of California, Section 352-c of the General Business Law of the State of New York, Sections 21.20.010 and 21.20.430 of the Securities Act of the

EXHIBIT A
SHULMAN I - COMPLAINT

State of Washington and under the common law.

6. The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand (\$10,000) dollars.

FIRST COUNT

7. From on or about November 1, 1969, to about June 20, 1970, Goldman, Sachs, acting from and within the Southern District of New York, sold and offered for sale to the public, and otherwise acted as underwriter for the sale on the open market of, securities in the form of promissory notes of Penn Central Transportation Company ("Penn Central") having an aggregate face value in excess of \$80,000,000, which Goldman, Sachs had purchased at a discount from Penn Central (the "Penn Central notes"). The Penn Central notes are not commercial paper, bankers' acceptances or commercial bills within the meaning of the Securities Exchange Act of 1934.

8. On or about December 31, 1969, plaintiff instructed Seattle-First National Bank (the "Bank") to purchase for him approximately \$300,000 of the highest quality prime short-term commercial paper available. Acting upon plaintiff's instructions, on

EXHIBIT A

SHULMAN I - COMPLAINT

or about January 5, 1970, the Bank purchased from Goldman, Sachs, through its Los Angeles, California, office, one of the Penn Central notes, dated January 5, 1970, having a maturity date of July 6, 1970, and a face value of \$300,000, for which plaintiff paid \$286,729.17. Confirmation of said purchase was mailed to the Bank in Seattle, Washington, and said note was delivered to The Chase Manhattan Bank, N.A., in New York, New York for safekeeping.

9. At all relevant times, Goldman, Sachs was and held itself out to the public as being, the investment banking firm which regularly handled Penn Central's promissory notes, the leading underwriter, investment banker and broker-dealer for Penn Central and a confidential financial adviser to Penn Central. In such capacity, Goldman, Sachs had access to information concerning Penn Central and had notice or knowledge of, or in the exercise of reasonable diligence could and should have known all material facts concerning, Penn Central's issuance of promissory notes and the management, operation, financial dealings, financial condition and prospects of Penn Central.

EXHIBIT A

SHULMAN I - COMPLAINT

10. In connection with its sale of the Penn Central notes, Goldman, Sachs stated and represented and implied by its course of business and intended that the investing public, including plaintiff, should rely upon the following untrue statements of material facts, among others:

(a) The Penn Central notes were prime commercial paper of the highest quality.

(b) Goldman, Sachs had made a thorough and accurate investigation of, and had kept under continuous review, the financial condition of Penn Central and the quality and soundness of its promissory notes.

11. The sale by Goldman, Sachs of the promissory note, as hereinabove alleged in Paragraph 8, constituted a sale of securities by the use of means or instruments of transportation or communications in interstate commerce or by the use of the mails to obtain money by means of statements of material fact which were untrue, as hereinabove alleged in Paragraph 10, and omission to state material facts necessary in order to make the statements, in the light of the circumstances under which they were

EXHIBIT A

SHULMAN I - COMPLAINT

made, not misleading, in the following respects, among others:

(a) Penn Central had for some time been facing severe cash shortages and difficulties in obtaining financing to meet its operating expenses, improvement costs and debt maturities;

(b) Penn Central had been unable for some time to obtain long-term financing, and had been, since at least as early as 1968, almost completely dependent upon short-term financing and had no prospects for obtaining long-term financing;

(c) Penn Central had already pledged all of its assets to its bank creditors, and Penn Central had no assets to pledge or otherwise use to obtain further loans or financing or to cover or meet its obligations with respect to its promissory notes;

(d) During the autumn of 1969, Goldman, Sachs had participated in the application by Penn Central to the Interstate Commerce

EXHIBIT A

SHULMAN I - COMPLAINT

commission for approval of the issuance of commercial paper at which time the Interstate Commerce Commission and members of its staff expressed serious concern over the heavy dependence of Penn Central upon short-term financing;

(e) Penn Central was using the proceeds from the sale of its promissory notes to refinance its debt maturities rather than for current operating expenses;

(f) Penn Central was sustaining large and rapidly increasing operating losses and working capital deficits;

(g) Penn Central had no firm commitments from commercial banks or other sources to assure that it would have sufficient funds to redeem its outstanding promissory notes at maturity, and Penn Central did not have bank lines of credit sufficient for that purpose;

(h) Goldman, Sachs, as the investment banker for and confidential financial advisor to Penn Central, had fiduciary

EXHIBIT A

SHULMAN I - COMPLAINT

relationships with and obligations and loyalties to Penn Central;

(i) Beginning at least as early as January 1, 1970, and at all relevant times, Goldman, Sachs was obligated to repurchase the Penn Central notes which it had sold and was also selling the Penn Central notes for its own account.

12. Plaintiff did not know and in the exercise of reasonable care could not have known that the statements and representations made by Goldman, Sachs were untrue or that they omitted to state material facts necessary to make such statements not misleading. Plaintiff relied on Goldman, Sachs' statements as being true and complete, and plaintiff was induced by such statements to purchase the Penn Central note described in Paragraph 8.

13. At all relevant times, Goldman, Sachs received commissions, discounts and other compensation and remuneration from the sale and distribution of the Penn Central notes and had other financial interests in the sale and distribution of such notes.

14. On or about June 21, 1970, Penn Central

EXHIBIT A

SHULMAN I - COMPLAINT

filed a petition for reorganization pursuant to Section 77 of the Bankruptcy Act (11 U.S.C. Section 205). Penn Central is, at the date hereof, still in bankruptcy, and the Penn Central note purchased by plaintiff was not redeemed or otherwise paid at maturity and, although duly presented for payment, has not been redeemed or otherwise paid as of the date hereof.

15. By reason of the foregoing, Goldman, Sachs violated Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, in that it offered and sold the Penn Central note purchased by plaintiff by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails and (a) employed a device, scheme or artifice to defraud plaintiff; (b) obtained plaintiff's money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices

EXHIBIT A

SHULMAN I - COMPLAINT

and a course of business which operated as a fraud and deceit on plaintiff.

16. By reason of the foregoing, plaintiff has been damaged in the amount of \$300,000.

SECOND COUNT

17. Plaintiff repeats and realleges Paragraphs 1 through 14, both inclusive, and 16.

18. By reason of the foregoing, Goldman, Sachs violated Sections 25400, 25401, 25402, 25500, 25501 and 25502 of the Corporations Code of the State of California, Section 352-c of the General Business Law of the State of New York and Sections 21.20.010 and 21.20.430 of the Securities Act of the State of Washington, in that it engaged in the following acts and practices to induce and promote the sale and purchase of the Penn Central note described in paragraph 8: (a) fraud, deception, concealment, suppression and false pretense; (b) promises and representations as to the future which were beyond reasonable expectations and unwarranted by existing circumstances; (c) representations or statements which were false, where Goldman, Sachs (i) knew the truth; or (ii) with reasonable effort could have known the truth; or

EXHIBIT A

SHULMAN I - COMPLAINT

(iii) made no reasonable effort to ascertain the truth; or (iv) did not have knowledge concerning the representations or statements made.

THIRD COUNT

19. Plaintiff repeats and realleges Paragraphs 1 through 14, both inclusive.

20. The aforesaid untrue statements and omissions were intentionally, knowingly, recklessly and fraudulently made by Goldman, Sachs to induce plaintiff to rely upon Goldman, Sachs' statements as true and complete in all respects, and, in justifiable reliance thereon, plaintiff did purchase the Penn Central note described in Paragraph 8 to the detriment of plaintiff and for the financial benefit of Goldman, Sachs.

21. By reason of the foregoing, Goldman, Sachs violated the common law rights of plaintiff, and plaintiff has been damaged in the amount of \$300,000.

WHEREFORE, plaintiff demands judgment:

(A) For damages in the amount of \$300,000 with interest thereon from July 6, 1970.

EXHIBIT A

SHULMAN I - COMPLAINT

(B) For the costs and disbursements of
this action.

(C) For such other and further relief
as the court may deem proper.

DATED: New York, New York
May 4, 1971.

GRAUBARD MOSKOVITZ McGOLDRICK
DANNETT & HOROWITZ

By _____
A Member of the Firm
Attorneys for Plaintiff
345 Park Avenue
New York, New York 10022
(212) 593-3000

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ALEX SHULMAN,

Plaintiff,

71 Civ. 1996
(DNE)

-against-

ANSWER

GOLDMAN, SACHS & CO., et al.,

Defendants.

-----x

Defendants Goldman, Sachs & Co. ("Goldman, Sachs") and H. R. Young, by their attorneys, Sullivan & Cromwell, answering the Complaint:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraphs 1 and 14.

2. Admit the allegations of paragraph 2.

3. Admit the allegations of paragraph 3, except admit that Robert E. Mnuchin (sued as Robert E. Munchin) is a general partner of Goldman, Sachs, and deny that Lewis J. Kaufman is a general partner of Goldman, Sachs.

4. Deny each and every allegation of paragraphs 4, 5, 6, 10, 11, 15, 16, 18, 20 and 21.

EXHIBIT B

SHULMAN I-GOLDMAN, SACHS ANSWER

5. Deny each and every allegation of paragraph 7, except admit that between November 1, 1969 and May 1, 1970 Goldman, Sachs acted as dealer in the sale of unsecured promissory notes ("commercial paper") of Penn Central Transportation Company ("PCTC") in an aggregate face amount in excess of \$80,000,000.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8, except admit that Goldman, Sachs sold to Seattle First National Bank as of January 5, 1970 PCTC commercial paper in the face amount of \$300,000 maturing July 6, 1970, for a purchase price of \$286,160.42. Confirmation of that sale was mailed by Goldman, Sachs to Seattle First National Bank, and the commercial paper was delivered to the Chase Manhattan Bank, N.A., in New York against payment.

7. Deny each and every allegation of paragraph 9, except admit that during the relevant period Goldman, Sachs was and held itself out as a dealer in PCTC commercial paper.

EXHIBIT B

SHULMAN I-GOLDMAN, SACHS ANSWER

8. Deny each and every allegation of paragraph 12, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's knowledge or reliance.

9. Deny each and every allegation of paragraph 13, except admit that Goldman, Sachs, as dealer, purchased commercial paper from PCTC for resale at a profit.

10. Answering paragraphs 17 and 19, repeat and reallege their answers to the paragraphs incorporated therein by reference.

FIRST AFFIRMATIVE DEFENSE

11. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

12. Upon information and belief, plaintiff is estopped from asserting the claims alleged in the Complaint, having purchased commercial paper with full knowledge of all material facts.

EXHIBIT B

SHULMAN I-GOLDMAN, SACHS ANSWER

THIRD AFFIRMATIVE DEFENSE

13. The action is barred by the statute of limitations.

FOURTH AFFIRMATIVE DEFENSE

14. The action is barred by the statute of frauds.

WHEREFORE, defendants Goldman, Sachs & Co. and H. R. Young demand judgment dismissing the Complaint together with the costs and disbursements of this action, including counsel fees; and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
December 18, 1974

SULLIVAN & CROMWELL

By _____
A Member of the Firm
Attorneys for Defendants,
Goldman, Sachs & Co. and
H. R. Young
48 Wall Street,
New York, New York 10005
HANover 2-8100

BOGLE, GATES, DOBRIN, WAKEFIELD
& LONG
Ronald E. McKinstry and Delbert
D. Miller
Attorneys for Plaintiff
14th Floor Norton Building
Seattle, Washington 98104
Mutual 2-5151

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALEX SHULMAN,

Plaintiff,

-vs-

SEATTLE-FIRST NATIONAL
BANK, a national banking
association,

Defendant.

NO. 9760

C O M P L A I N T

AND DEMAND FOR TRIAL
BY JURY

Plaintiff alleges:

JURISDICTION

1. The jurisdiction of this court herein
is based on Section 22 of the Securities Act of 1933,
15 U.S.C. §77(v); on Section 27 of the Securities
Exchange Act of 1934, 15 U.S.C. § 78 (aa), and on the
principles of pendent jurisdiction.

EXHIBIT C
SHULMAN II-COMPLAINT

PARTIES

2. Plaintiff is an individual residing in the Western District of Washington.

3. Defendant is a national banking association organized and existing under the laws of the United States of America and established in the Western District of Washington.

CLAIMS FOR RELIEF

4. This action arises under Section 12(2) of the Securities Act of 1933, 15 U.S.C. §77(1); and Section 17(a) of the Securities Act of 1933, 15 U.S.C. §77(a); and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78(j), and the rules and regulations of the Securities and Exchange Commission promulgated thereunder; and Section 1 of the Securities Act of Washington, RCW 21.20.010; and Section 43 of the Securities Act of Washington, RCW 21.20.430; and under the common law.

5. Plaintiff, individually and as an officer and the sole stockholder of Alaska Distributors Company, a corporation, has for many years been a customer of the defendant bank. Plaintiff has utilized the services and placed reliance upon several

EXHIBIT C
SHULMAN II-COMPLAINT

of the departments of the defendant bank. For many years, plaintiff has maintained checking and savings accounts, both personal and corporate, with defendant bank. Plaintiff has utilized and relied upon the services of the Trust Department of the defendant bank. Plaintiff has also utilized and relied upon the services of the Commercial Loan Department of the defendant bank. Included among the services which have been offered to and given to plaintiff by defendant and its employees has been the giving of opinions, advice and recommendations concerning financial and investment matters.

6. Defendant bank and its agents and employees have at all times pertinent represented themselves and held themselves out to plaintiff to be competent advisors, experts and consultants in financial and investment matters. Plaintiff has at all times pertinent relied on said representations and placed great confidence and trust in the opinion, advice and guidance given to him by defendant bank and its employees. Because of the confidential relationship existing between the parties, plaintiff has on several occasions and with the knowledge of

EXHIBIT C
SHULMAN II-COMPLAINT

defendant acted in reliance upon the opinions, advice and recommendations of defendant and its agents and employees in financial and investment matters.

7. On or about December 30, 1969, defendant, through its agents and employees in its commercial loan and investment departments specifically recommended and represented to plaintiff that he should not invest certain funds in time certificates of deposit but rather recommended and represented that he should invest said funds in "Penn Central commercial paper," which was represented to be of the highest quality prime short-term commercial paper. At that time, and for some considerable time subsequent thereto, plaintiff was completely uninformed concerning investments in commercial paper. He had never had any prior experience with investments in commercial paper and that fact was known to defendant and its agents and employees.

8. Plaintiff acted in reliance on the representations and recommendations of defendant as alleged above and acquiesced in a transaction whereby defendant bank sold to plaintiff one Penn Central Transportation Company note date January 5, 1970,

EXHIBIT C
SHULMAN II-COMPLAINT

having a maturity date of July 6, 1970, and a face amount of \$300,000.00 for which defendant bank charged plaintiff's account \$286,729.17. Confirmation of said purchase was handled by mail between defendant bank in Seattle and Goldman, Sachs & Co. in New York, New York, and said note was delivered, pursuant to the advice and instructions of the defendant to The Chase Manhattan Bank, N.A., in New York, New York, for safekeeping.

9. Defendant had access to information concerning Penn Central and had notice or knowledge of, or in the exercise of reasonable diligence could and should have known all material facts concerning Penn Central's issuance of promissory notes and the management, operation, financial dealings, financial condition and prospects of Penn Central.

10. In connection with its sale of the Penn Central note, defendant stated and represented and implied by its course of business and intended that plaintiff should rely upon the following untrue statements of material facts, among others:

(a) The Penn Central notes were prime commercial paper of the highest quality;

EXHIBIT C
SHULMAN - COMPLAINT

(b) Defendant had made a thorough and accurate investigation of, and had kept under continuous review, the financial condition of Penn Central and the quality and soundness of its promissory notes.

11. The sale by defendant of the promissory note, as hereinabove alleged in paragraph 8, constituted a sale of securities by the use of means or instruments of transportation or communications in interstate commerce or by the use of the mails to obtain money by means of statements of material fact which were untrue, as hereinabove alleged in paragraph 10, and omission to state material facts necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, in the following respects, among others:

(a) Penn Central had for some time been facing severe cash shortages and difficulties in obtaining financing to meet its operating expenses, improvement costs and debt maturities;

(b) Penn Central had been unable for some time to obtain long-term financing,

EXHIBIT C

SHULMAN II-COMPLAINT

and had been, since at least as early as 1968, almost completely dependent upon short-term financing and had no prospects for obtaining long-term financing;

(c) Penn Central had already pledged all of its assets to its bank creditors, and Penn Central had no assets to pledge or otherwise use to obtain further loans or financing or to cover or meet its obligations with respect to its promissory notes;

(d) During the autumn of 1969, Goldman, Sachs had participated in the application by Penn Central to the Interstate Commerce Commission for approval of the issuance of commercial paper at which time the Interstate Commerce Commission and members of its staff expressed serious concern over the heavy dependence of Penn Central upon short-term financing;

(e) Penn Central was using the proceeds from the sale of its promissory notes to refinance its debt maturities rather

EXHIBIT C

SHULMAN II-COMPLAINT

than for current operating expenses;

(f) Penn Central was sustaining large and rapidly increasing operating losses and working capital deficits;

(g) Penn Central had no firm commitments from commercial banks or other sources to assure that it would have sufficient funds to redeem its outstanding promissory notes at maturity, and Penn Central did not have bank lines of credit sufficient for that purpose;

(h) Goldman, Sachs, as the investment banker for and confidential financial advisor to Penn Central (with whom defendant dealt) had fiduciary relationships with and obligations and loyalties to Penn Central; and

(i) Beginning at least as early as January 1, 1970, and at all relevant times, Goldman, Sachs was obligated to repurchase the Penn Central notes which it had sold and was also selling the Penn Central notes for its own account.

12. Defendant knew, or in the exercise of

EXHIBIT C
SHULMAN II-COMPLAINT

reasonable care, could have known that its statements and representations, express and implied, to plaintiff were materially untrue or incomplete as aforesaid, and defendant acted with reckless disregard for the interests of the plaintiff.

13. Plaintiff did not know and in the exercise of reasonable care could not have known that the statements and representations made by defendant were untrue or that they omitted to state material facts necessary to make such statements not misleading. Plaintiff relied on defendant's statements as being true and complete, and plaintiff was induced by such statements to purchase the Penn Central Notes described in Paragraph 8.

14. Defendant received consideration for the sale and distribution of the Penn Central note and had other financial interests in the sale and distribution of said note.

15. On or about June 21, 1970, Penn Central filed a petition for reorganization pursuant to Section 77 of the Bankruptcy Act (11 U.S.C. §205). Penn Central is, at the date hereof, still in bankruptcy, and the Penn Central note purchased by

EXHIBIT C

SHULMAN II-COMPLAINT

plaintiff was not redeemed or otherwise paid at maturity and, although duly presented for payment, has not been redeemed or otherwise paid as of the date hereof.

16. Plaintiff has been harmed and has sustained damages in that the subject Penn Central note was and is, in light of the true facts, worthless or worth substantially less than the face value thereof and the consideration paid therefor, by reason of the facts and circumstances set forth herein.

17. By reason of the foregoing, defendant by itself and in concert with Goldman, Sachs & Co., violated the statutory provisions cited in paragraph 4 above, and the rules and regulations promulgated thereunder, in that it offered and sold the Penn Central note purchased by plaintiff by the use of means or instruments of transportation or communication in interstate commerce or by use of the mails and (a) employed a device, scheme or artifice to defraud plaintiff; (b) obtained plaintiff's money or property by means of untrue statements of material facts or omissions to state material facts necessary in order

EXHIBIT C
SHULMAN II-COMPLAINT

to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices and a course of business which operated as a fraud and deceit on plaintiff.

18. By reason of the foregoing, defendant violated the legal rights of plaintiff and caused plaintiff damage in the amount of \$300,000.00, plus interest, costs and reasonable attorneys' fees.

19. Plaintiff hereby tenders the subject Penn Central note to defendant and demands repayment of all consideration paid by plaintiff to defendant therefor, with interest thereon.

20. Plaintiff demands a trial by jury.

WHEREFORE, plaintiff demands judgment:

(1) For damages in the amount of \$300,000.00, with interest thereon from July 6, 1970.

(2) For the costs, disbursements and reasonable attorneys' fees incurred in this action.

(3) For such other and further relief as the court deems just.

DATED: December 18, 1974.

EXHIBIT C

SHULMAN II-COMPLAINT

BOGLE, GATES, DOBRIN, WAKEFIELD
& LONG

/s/ RONALD E. McKINSTRY

RONALD E. McKINSTRY

/s/ DELBERT D. MILLER

DELBERT D. MILLER

Attorneys for Plaintiff,
Alex Shulman

PAYTON SMITH and HALL BAETZ
Of Davis, Wright, Todd, Riese & Jones
Attorneys for Defendant and Third-
Party Plaintiff
4200 Seattle-First National Bank
Building
Seattle, Washington 98154
MU 2-3150

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ALEX SHULMAN,

Plaintiff,

vs.

SEATTLE-FIRST NATIONAL
BANK, a national banking
association,

Defendant.

and

SEATTLE-FIRST NATIONAL
BANK, a national banking
association,

Third-Party
Plaintiff,

vs.

GOLDMAN SACHS & CO., a
general partnership; and
ARTHUR G. ALTSCHUL, GEORGE
T. BOYER, MICHAEL H. COLES,
ROBERT S. DANFORTH, GEORGE
E. DOTY, RICHARD J. FAY,
HENRY H. FOWLER, DONALD
R. GANT, CHARLES L.

NO. 9760

THIRD-PARTY COMPLAINT

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

GRANNON, JAMES P. GORTER,)
PETER A. HAGER, JAMES C.)
HEMPHILL, JOHN C. JAMISON,)
LEWIS J. KAUFMAN, H.)
FREDERICK KRIMENDAHL, II,)
GUSTAVE L. LEVY, PETER A.)
LEVY, JAMES S. MARCUS, L.)
THOMAS MELLY, RICHARD L.)
MENSCHER, ROBERT B.)
MENSCHER, STANLEY R.)
MILLER, ROBERT E. MUNCHIN,)
JAMES D. ROBERTSON, CHARLES)
E. SALTZMAN, EDWARD A.)
SCHRADER, ALAN L. STEIN,)
L. JAY TENENBAUM, ROSS E.)
TRAPHAGEN, JR., THOMAS B.)
WALKER, JR., JOHN L.)
WEINBERG, SIDNEY J.)
WEINBERG, JR., J. FRED)
WEINTZ, JR., LEWIS M.)
WESTON, JOHN C. WHITEHEAD,)
ROBERT G. WILSON, and H)
R. YOUNG, its partners,)

Third-Party)
Defendants,)

COMES NOW defendant and third-party plaintiff,
Seattle-First National Bank, and for claim against
third-party defendants, Goldman Sachs & Co., and its
general partners, states as follows:

FIRST CLAIM

1. Third-party plaintiff is a national banking
association organized and existing under the laws of
the United States with its principal place of business
in the City of Seattle, King County, Washington.

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

2. Plaintiff, Alex Shulman, has filed a Complaint against defendant and third-party plaintiff, a copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

3. Third-party defendant, Goldman Sachs & Co., is a general partnership, whose general partners are named as defendants herein, engaged in business as a securities broker-dealer. Goldman Sachs & Co. does not maintain offices in this district but does carry on an extensive securities business with persons and corporations, including the defendant and third-party plaintiff, in this district. The third-party defendants have daily communication by telephone with potential and actual customers for the securities handled by third-party defendant. Typically, orders are taken by telephone, and all other aspects of the transaction including the confirmation of buy-orders and sales, payment and transfer of securities, are carried out by mail to and from this district. More particularly, this was done in connection with the transaction giving rise to this litigation.

4. This court has jurisdiction over the third-party defendant, Goldman Sachs & Co., and its general partners, for the reason that if any violation has been alleged by plaintiff's Complaint it is one

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

arising under the Securities Act of 1933 and the Securities and Exchange Act of 1934; and, further, the pleadings allege activities which make Goldman Sachs & Co., a partnership, an entity which would be responsible under the securities laws of the United States for all or part of the damages to the plaintiff if third-party defendants had been joined as a party.

5. This court has venue over this action and of all parties hereto by virtue of the fact that the primary acts which purportedly constitute the violation alleged took place in this district and the further fact that the suit involves a national bank whose principal place of business is in this district.

6. On or about January 2, 1970, third-party plaintiff, acting on the request of and as agent for plaintiff, purchased from third-party defendants for plaintiff's account a note of Penn Central Transportation Company (herein called "Penn Central") dated January 5, 1970, having a maturity date of July 6, 1970, and a face amount of \$300,000.

7. At the time of this purchase, third-party

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

defendants had access to information concerning Penn Central and had notice or knowledge of, or in the exercise of reasonable diligence could have and should have known all material facts concerning, Penn Central's issuance of promissory notes and the management, operation, financial dealings, financial conditions, and prospects of Penn Central.

8. In connection with this sale of the Penn Central note, third-party defendants stated and represented to third-party plaintiff that the notes of Penn Central were commercial paper of prime quality.

9. Third-party defendant did not advise third-party plaintiff of the matters alleged in subparagraphs (a) through (i) of paragraph 11 of plaintiff's Complaint. If those matters were true, as alleged by plaintiff, third-party defendant knew, or in the exercise of reasonable care should have known, of them and should have disclosed them to third-party plaintiff.

10. Third-party plaintiff did not know, and in the exercise of reasonable care could not have known, that the statements and representations made

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

by third-party defendant were untrue or that it omitted to state material facts necessary to make such statements not misleading. Third-party plaintiff reasonably and justifiably relied on third-party defendants' statements and representations as being true and complete in connection with the purchase of the Penn Central note for the account of plaintiff.

11. Plaintiff alleged in his Complaint that his action arises under Section 12(2) of the Securities Act of 1933, 15 U.S.C. §77(1); and Section 17(a) of the Securities Act of 1933, 15 U.S.C. §77(a); and Sections 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78(j), and the rules and regulations of the Securities and Exchange Commission promulgated thereunder; and Section 1 of the Securities Act of Washington, RCW 21.20.010; and Section 43 of the Securities Act of Washington, RCW 21.20.430 and under the common law.

12. Third-party plaintiff denies that there has been any violation of law as alleged by plaintiff and further denies that plaintiff is entitled to any damages or other relief prayed for in his Complaint.

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

However, if third-party plaintiff is determined in this action to be liable in any way to plaintiff, such liability shall have been due to the statements, representations, acts, and omissions of third-party defendant and its agents and employees in providing materially misleading and incomplete information regarding the Penn Central note purchased by plaintiff in violation of federal and state securities laws as alleged by plaintiff in his Complaint, and third-party plaintiff is, therefore, entitled to judgment for indemnification over and against third-party defendants in an amount equal to any judgment in favor of plaintiff against third-party plaintiff.

SECOND CLAIM

13. Third-party plaintiff realleges the allegations contained in paragraphs 1 through 11 of the Third-Party Complaint herein as though set out in full.

14. Third-party plaintiff denies that there has been any violation of law as alleged by plaintiff and further denies that plaintiff is entitled to any damages or other relief prayed for in his Complaint. However, if third-party plaintiff is determined in

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

this action to be liable in any way to plaintiff, such liability shall have been due to statements, representations, acts, and omissions of third-party defendants and its agents and employees in providing materially misleading and incomplete information regarding the Penn Central note purchased by plaintiff in violation of federal and state securities laws as alleged by plaintiff in his Complaint, and third-party plaintiff is, therefore, entitled to judgment for contribution over and against third-party defendant.

WHEREFORE, third-party plaintiff prays for relief as follows:

1. For recovery from third-party defendants of all damages if any, including costs and attorneys' fees, which plaintiff may recover against third-party plaintiff.
2. Alternatively, that third-party defendants be held liable for contribution for all damages, if any, including costs and attorneys' fees which plaintiff may recover against third-party plaintiff.
3. For such other and further relief as this

EXHIBIT D

SHULMAN II-THIRD PARTY COMPLAINT

court deems just and equitable.

DAVIS, WRIGHT, TODD, RIESE & JONES

By _____
Payton Smith

By _____
Hall Baetz

Attorneys for Defendant/Third-
Party Plaintiff, Seattle-First
National Bank

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

ALEX SHULMAN,	:	
	:	
Plaintiff,	:	MDL 56A
	:	(W.D. Wash. Civ.
-against-	:	No. 9760)
	:	
SEATTLE-FIRST NATIONAL BANK, a	:	
national banking association,	:	72 Civ. 616 DNE
	:	
Defendant and	:	
Third-Party	:	ANSWER TO THIRD-
Plaintiff,	:	<u>PARTY COMPLAINT</u>
	:	
-against-	:	
	:	
GOLDMAN, SACHS & CO., <u>et al.</u> ,	:	
	:	
Third-Party	:	
Defendants.	:	

-----x

Third-party defendant Goldman, Sachs & Co.
("Goldman, Sachs"), by its attorneys, Sullivan &
Cromwell, for its answer to the third-party complaint:

1. Denies knowledge or information
sufficient to form a belief as to the truth of the
allegations of paragraphs 1 and 2.
2. Denies each and every allegation of
paragraph 3, except admits that Goldman, Sachs is
engaged in the business of a registered broker-dealer,

EXHIBIT E

SHULMAN II-GOLDMAN, SACHS ANSWER

admits that Goldman, Sachs does not maintain offices in the district referred to therein, admits that it makes sales of securities to purchasers in said district and admits that it uses the telephone and the mails in effecting such sales.

3. Denies each and every allegation of paragraphs 4, 5, 7, 8 and 10.

4. Denies each and every allegation of paragraph 6, except admits that third-party plaintiff as of January 5, 1970 purchased from Goldman, Sachs an unsecured promissory note ("commercial paper") of Penn Central Transportation Company ("PCTC") in the face amount of \$300,000, having a maturity date of July 6, 1970.

5. Denies each and every allegation of paragraph 9, except admits that Goldman, Sachs did not advise third-party plaintiff of the alleged facts recited in paragraph 11(a)-(i) of plaintiff's complaint.

6. Denies each and every allegation of paragraph 11, except refers to plaintiff's complaint for the contents thereof.

7. Denies each and every allegation of

EXHIBIT E

SHULMAN II-GOLDMAN, SACHS ANSWER

paragraph 12, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the basis of any liability of third-party plaintiff to plaintiff.

8. Answering paragraph 13, repeats and realleges its answers to the paragraphs incorporated therein by reference.

9. Denies each and every allegation of paragraph 14, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning any basis of liability of third-party plaintiff to plaintiff.

FIRST AFFIRMATIVE DEFENSE

10. The third-party complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

11. Upon information and belief, third-party plaintiff is estopped from asserting the claim alleged in the third-party complaint, having purchased commercial paper with full knowledge of all material facts.

THIRD AFFIRMATIVE DEFENSE

12. The action is barred by the statute of

EXHIBIT E

SHULMAN II-GOLDMAN, SACHS ANSWER

limitations.

FOURTH AFFIRMATIVE DEFENSE

13. The action is barred by the statute of frauds.

WHEREFORE, third-party defendant demands judgment dismissing the third-party complaint together with the costs and disbursements of this action, including counsel fees; and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
February 25, 1972

SULLIVAN & CROMWELL

By _____
(A Member of the Firm)
Attorneys for Third-Party
Defendant,
48 Wall Street,
New York, New York 10005
(212) HA2-8100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

IN RE	:	
PENN CENTRAL COMMERCIAL PAPER	:	MDL 56A (DNE)
LITIGATION	:	

-----X

ALEX SHULMAN,		
Plaintiff,	:	
-against-	:	71 Civ. 1996
	:	(DNE)
GOLDMAN, SACHS & CO., et al.,	:	
Defendants,	:	
SEATTLE-FIRST NATIONAL BANK,	:	
Applicant.	:	

-----X

EDELSTEIN, Chief Judge

OPINION

Seattle-First National Bank ("Seattle-First") has moved the court for an order allowing it to intervene as a plaintiff, pursuant to Fed. R. Civ.P. Rule 24(a)(2) or 24(b)(2), in Alex Shulman v. Goldman, Sachs & Co. et al., 71 Civ. 1996 ("Shulman I") or alternatively for an order consolidating Alex Shulman v. Seattle-First National Bank (W.D. Washington Civ. No. 9760) 72 Civ. 616 ("Shulman II") with Shulman I

OPINION OF CHIEF JUDGE EDELSTEIN

pursuant to Fed.R.Civ.P. Rule 42(a). In order to understand the context in which this motion is made, it is necessary to detail the history of these cases.

In May, 1971 Alex Shulman commenced Shulman I in this court, seeking recovery of the face value of a commercial paper note of the Penn Central Transportation Company. He alleged that the note, which was never repaid, was purchased for him by his agent, Seattle-First, from Goldman, Sachs. In June, 1971 Shulman filed Shulman II in the Western District of Washington to recover the face value of the note from Seattle-First. Seattle-First asserted a claim over against Goldman, Sachs.

These two actions, along with forty-four other similar suits against Goldman, Sachs, were consolidated for coordinated pretrial proceedings before this court by the Judicial Panel on Multidistrict Litigation, pursuant to 28 U.S.C. §1407 (1970). Coordinated pretrial proceedings were completed in November, 1973, and by letter dated November 28, 1973, this court suggested to the Judicial Panel on Multidistrict Litigation that it remand the consolidated cases to the transferor

OPINION OF CHIEF JUDGE EDELSTEIN

courts. On December 13, 1973 the Panel issued a conditional order remanding Shulman II to the Western District of Washington; Seattle-First opposed the remand and moved the panel to vacate its remand order. That motion had the effect of staying the remand pending further order of the Panel. See Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 28 U.S.C. §1407 (Supp II. 1972) Rule 15(f). Accordingly, this court retains such jurisdiction over Shulman II as was granted it by the transfer pursuant to 28 USC §1407.

The threshold question presented is whether this court has the power to order intervention or consolidation. It is undisputed that, as the court before which Shulman I is currently pending, this court may order intervention pursuant to Fed.R.Civ.P. Rules 24(a)(2) or 24(b)(2). The question of whether this court may order consolidation of Shulman II with Shulman I is more complex.

Seattle-First argues that the transfer of Shulman II to this court, pursuant to 28 U.S.C. §1407 (1970), gives this court jurisdiction and powers. with respect to pretrial proceedings, which are coextensive

OPINION OF CHIEF JUDGE EDELSTEIN

with that of the transferor court. Accordingly, Seattle-First reasons, this court has the power to grant a motion to consolidate because the motion was made as part of the pretrial proceeding. Alex Shulman and Goldman, Sachs argue that because the proposed consolidation is for all purposes and because Shulman II is before this court only for pretrial purposes, in the absence of a transfer pursuant to 28 U.S.C. §1404 (1970), the consolidation would be ineffective once the Panel remands the case to the transferor court. They further contend that this court cannot transfer Shulman II to itself pursuant to section 1404 because in light of 12 U.S.C. § 94 (1970), that action could not have been brought originally in this district. In response Seattle-First contends that because Shulman II is already before this court, a section 1404 transfer is not a prerequisite to consolidation.

The court is convinced that it does not have the power to order consolidation of Shulman II with Shulman I. Fed.R.Civ.P. 42(a)^{1/} provides for consolidation "[w]hen actions . . . are pending before the court. . . ." The question posed here

OPINION OF CHIEF JUDGE EDELSTEIN

is whether Shulman II is pending before this court for purposes of a Rule 42 consolidation. Rule 42 clearly contemplates a consolidation for proceedings beyond, as well as during, the pretrial stage of an action; indeed what Seattle-First seeks is a consolidation for all purposes. Shulman II is pending before this court pursuant to 28 U.S.C. §1407 which restricts the jurisdiction of this court to pretrial proceedings. While Shulman II is clearly pending before this court for pretrial purposes, it is not pending in the sense meant by Rule 42 because that Rule exists in the context of a consolidation for purposes extending beyond pretrial. Accordingly, for a court to effect a consolidation pursuant to Rule 42, the actions to be consolidated must both be pending before the court for all purposes. That is not the case here and thus the court does not have the power to consolidate Shulman II with Shulman I in accordance with Rule 42.

Furthermore, section 1407 and the Panel's Rules of Procedure do not contemplate a consolidation by the transferee court of cases from different districts. Rule 15(b) provides as follows:

OPINION OF CHIEF JUDGE EDELSTEIN

Each transferred action that has not been terminated in the transferee court will be remanded to the transferor district for trial, unless ordered transferred by the transferee judge to the transferee or other district under 28 U.S.C. §1404(a) or 28 U.S.C. §1406.

Rules of Procedure of the Judicial Panel on Multi-district Litigation, supra, Rule 15(b). The jurisdiction of the transferee court over the cases consolidated for pretrial purposes is thus ended in one of three ways: termination in the transferee court by valid judgment,^{2/} transfer by the transferee judge under section 1404(a) or section 1406, or remand to the transferor court. No provision is made for the transfer of a case other than under sections 1404(a) and 1406 or for the retention for trial by the transferee court of a case in which it is not also the transferor court. Consolidation of Shulman II with Shulman I would be tantamount to such a retention and finds no basis in the statutory scheme. Thus this court cannot, consistently with this scheme, order the consolidation sought by Seattle-First.

Because the jurisdiction vested in this

OPINION OF CHIEF JUDGE EDELSTEIN

court by the section 1407 transfer does not permit a consolidation under Rule 42(a), a transfer of Shulman II to this court pursuant to section 1404(a) is a necessary precondition to consolidation. The section 1407 transferee judge has the power to order a section 1404(a) transfer of a case pending before him for consolidated pretrial proceedings. Pfizer v. Lord, 447 F.2d. 122 (2nd Cir. 1971). Thus if Shulman II satisfies the requirements for a section 1404(a) transfer, this court may order that transfer.

28 U.S.C. §1404(a) (1970) provides as follows:

For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.

This section, because of the "where it might have been brought" clause, must be read in conjunction with 12 U.S.C. § 94 (1970) which provides:

Actions and proceedings against any [national banking] association under this chapter may be had in any district or Territorial court of the United States held within the district in which such association may be established. . . .

As a national bank, Seattle-First may be sued only in

OPINION OF CHIEF JUDGE EDELSTEIN

the district in which its principal office is located.
Bruns, Nordeman & Co. v. American National Bank & Trust Co., 394 F.2d 300 (2nd Cir. 1968) cert. denied 393 U.S. 855 (1968). Shulman II could not have been brought in the Southern District of New York and, accordingly, cannot be transferred there under the terms of section 1404(a).

That the Panel may effect a section 1407 transfer in spite of section 94 is of no relevance here. Section 94 affects section 1404(a) because section 1404(a) requires that there be proper venue in the transferee court. The Panel has held that "Unlike section 1404(a), venue is not particularly relevant to the selection of a transferee court under section 1407." In re Revenue Properties Company, 309 F.Supp. 1002, 1004 (J.P.M.L. 1970). In considering the question of whether a section 1407 transfer could be ordered in a situation in which section 94 prohibited a section 1404(a) transfer, the Panel said "Such a lack of venue does not preclude transfer under section 1407." In re Westec Corp., 307 F.Supp. 559, 562 (J.P.M.L. 1969).

In sum, this court, as transferee court

OPINION OF CHIEF JUDGE EDELSTEIN

under section 1407, does not have the power to consolidate Shulman II with Shulman I pursuant to Fed.R.Civ.P. 42(a) in the absence of a section 1404(a) transfer. Section 94 precludes such a transfer. Therefore, Seattle-First's motion for consolidation must be denied.

Seattle-First has also moved the court to allow it to intervene as a party plaintiff in Shulman I. Fed.R.Civ.P. 24(a) (2) provides for intervention upon timely application

(2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The courts have not arrived at a precise definition of the nature of the "interest relating to the property or transaction which is the subject of the action" which is necessary for intervention as of right. However, an analysis of the cases on this subject reveals certain guidelines.

The Supreme Court, in denying a taxpayer the right to intervene in a proceeding to enforce a

OPINION OF CHIEF JUDGE EDELSTEIN

summons directed to his employer, held that Rule 24(a)(2) requires "a significantly protectable interest." Donaldson v. United States, 400 U.S. 517 (1971). The Court of Appeals for the Eighth Circuit, in denying a charging party the right to intervene in an injunctive proceeding brought by the National Labor Relations Board, said "Intervention as of right presupposes that the applicant has a right to maintain a claim for the relief sought." Solien v. Miscellaneous Drivers & Helpers Union, 440 F.2d 124, 132 (8th Cir. 1971), cert. denied, 403 U.S. 905 (1971). In United States v. 936.71 Acres of Land, 418 F.2d 551 (5th Cir. 1969), the proposed intervenor sought to assert rights belonging to an existing party to the litigation (the State of Florida) on the theory that a resolution in favor of the State would secure the State's title to a tract of land, the proceeds of which she sought an opportunity to buy. Judge Wisdom, writing for the Court of Appeals for the Fifth Circuit said

A party has standing to prosecute a suit in the federal courts only if he is the "real party in interest" as that term is defined under Fed.R.Civ.P. 17(a).

OPINION OF CHIEF JUDGE EDELSTEIN

The stricture applies to intervenors as well as plaintiffs The authorities agree, moreover, that a party has no standing to assert a right if it is not his own. . . Furthermore the interest sought to be enforced must be "a present, substantial interest as distinguished from a contingent interest or mere expectancy." *Morgan v. King* 1950, 312 Ky. 792, 229 S.W. 2d 976, 978.

United States v. 936.71 Acres of Land, supra. at 556.

The Court of Appeals for the Seventh Circuit has held that Rule 24(a)(2) requires an interest that is direct rather than contingent. Air Lines Stewards & Stewardesses Ass'n v. American Airlines, Inc., 455 F.2d 101 (7th Cir. 1972). In Kheel v. American Steamship Owners Mutual Protection and Indemnity Ass'n, 45 F.R.D. 281 (S.D.N.Y. 1968) negligence claimants who held provable claims against a bankrupt steamship company sought to intervene in a declaratory judgment action brought by the trustees in bankruptcy against the bankrupt's insurer for construction of a policy, issued by the insurer, which covered liabilities for personal injuries sustained by crew members. Judge Mansfield denied intervention saying

OPINION OF CHIEF JUDGE EDELSTEIN

no evidence is offered to show that the recovery would, as a matter of law, inure to the exclusive benefit of personal injury claimants, including movants, as distinguished from all other general creditors of the estate. . .

The mere existence of a third person's contingent interest in the outcome of pending litigation is insufficient to warrant intervention.

Kheel v. American Steamship Owners Mutual Protection and Indemnity Ass'n, supra at 284.

The teaching of these cases is that an interest, to satisfy the requirements of Rule 24(a) (2), must be significant, must be direct rather than contingent, and must be based on a right which belongs to the proposed intervenor rather than to an existing party to the suit.

Seattle-First's papers do not clearly identify the interest it asserts as the basis for its proposed intervention. Seattle-First states that it has an interest in the commercial paper note which is the subject of Shulman I and its proposed complaint seeks rescission of its purchase of that note from Goldman, Sachs as agent for Shulman and repayment

OPINION OF CHIEF JUDGE EDELSTEIN

of the \$300,000 purchase price. The claim for rescission and repayment, however, is a claim which belongs to Alex Shulman absent a finding in Shulman II that Seattle-First is liable to him. If allowed to intervene, Seattle-First will be asserting a claim which belongs to an existing party much as the proposed intervenor in United States v. 936.71 Acres of Land, supra, sought to assert the rights of the State of Florida. Intervention to assert such a claim is clearly not contemplated by Rule 24(a)(2).

Seattle-First further submits that its interest arises from its status as a defendant in Shulman II, that it has an interest in intervening in Shulman I to avoid exposure to the possibility of liability in Shulman II. It argues that a resolution of Shulman I in favor of Goldman, Sachs may, through operation of the principles of stare decisis and collateral estoppel, prevent it from successfully asserting its claim - over against Goldman, Sachs in Shulman II should it be found liable to Alex Shulman in that case. It is clear that Seattle-First will have a direct and significant interest in the note if it is found to be liable to

OPINION OF CHIEF JUDGE EDELSTEIN

Shulman in Shulman II. The question here is whether potential impairment of that interest as a result of the resolution of Shulman I gives Seattle-First a sufficient interest in Shulman I to justify intervention. This question, in turn, depends on the likelihood that the principles of stare decisis and estoppel will operate as Seattle-First fears. Thus the directness of Seattle-First's interest in Shulman I depends on the likelihood that Shulman I will affect Shulman II.

The stare decisis effect of a decision in Shulman I cannot be called significant or direct. It is hornbook law that

in the same court system, as in the federal a decision is not binding upon a court of equal rank. . . . Thus a decision of one district court is not binding upon a different district court.

1B J. Moore, Federal Practice ¶0.402[1]. Determinations made by this court with respect to legal questions arising under the federal securities laws will not be binding on the district court in Washington. While it is true that a decision of one district court may be of some persuasive value in

OPINION OF CHIEF JUDGE EDELSTEIN

another, a holding that this constitutes an interest sufficient to justify intervention would expand the scope of Rule 24(a)(2) to such an extent that the interest requirement would essentially be read out of the rule. There is no basis in law or in policy for this court to take that step.

Seattle-First also argues that because it acted as Alex Shulman's agent in the transaction which gave rise to both cases, it may be estopped from relitigating in Shulman II issues which Shulman litigated against Goldman, Sachs in Shulman I.

The parties have offered no cases which determine, or even cast light upon, the issue of whether an agent who is suing upon a transaction is estopped, in any way, from asserting his claim if a judgment has already been rendered against the principal who has previously sued the same defendant with respect to that transaction. Seattle-First submits that the question could be decided either way.

Accordingly, Seattle-First's interest in the outcome of Shulman I is at best contingent. The collateral estoppel theory provides the basis for an

OPINION OF CHIEF JUDGE EDELSTEIN

interest only if it is assumed that Shulman I is tried before Shulman II and that the Shulman II court finds that an agent in Seattle-First's position can, as a matter of law, be estopped as a result of Shulman I. Neither of these assumptions can be made; both results are conjectural.

It cannot be said with any certainty that the outcome of Shulman I will impair Seattle-First's ability to protect itself in Shulman II. And because it is that impairment itself which forms the basis for the interest Seattle-First asserts to justify intervention, it cannot be said that Seattle-First has a direct and significant interest in Shulman I. The motion for intervention as of right must be denied for failure to comply with the interest requirement of Rule 24(a)(2).

Seattle-First also seeks to intervene pursuant to Fed.R. Civ.P. 24(b)(2) which provides for intervention upon timely application.

(2) when an applicant's claim or defense and the main action have a question of law or fact in common. . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the

OPINION OF CHIEF JUDGE EDELSTEIN

adjudication of the rights of
the original parties.

Intervention will necessarily prolong and complicate
the proceeding. As Judge Wyzanski wrote:

Additional parties always take
additional time. Even if they have
no witnesses of their own, they are
the source of additional questions,
objections, briefs, arguments, motions
and the like which tend to make the
proceeding a Donnybrook Fair.

Crosby Steam Gage & Valve Co. v. Manning Maxwell &
Moore, Inc. 51 F. Supp. 972, 973 (D. Mass. 1943).

In the exercise of its discretion the court should
allow intervention only when there exists a benefit
which will outweigh this delay. Seattle-First has
demonstrated no such benefit in this case. It argues
that the issues of law and fact in Shulman II are
identical to those in the main case. Therefore, the
proposed intervenor's only role here can be to
underline the issues already raised by the primary
litigants. This is particularly true in light of
the fact that this court is in no position to grant
any relief to Seattle-First in the absence of a
determination in Shulman II which will cause it to
incur damages as a result of the transaction which

OPINION OF CHIEF JUDGE EDELSTEIN

underlies both cases. Therefore, there is no justification for the delay which intervention will create in Shulman I. Intervention pursuant to Fed. R.Civ.P. 24(b)(2) is denied.

So ordered.

DAVID N. EDELSTEIN
Chief U.S.D.J.

Dated, New York, N.Y.
April 4, 1974

OPINION OF CHIEF JUDGE EDELSTEIN

FOOTNOTES

1/ The full text of this Rule is as follows:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

2/ Rule 15(a) of the Panel's Rules of Procedure for termination in the transferee court "by valid judgment, including but not limited to summary judgment, judgment of dismissal and judgment upon stipulation. . . ."

STATE OF NEW YORK

ss.:

COUNTY OF NEW YORK

LON BANNETT being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 200 Park Avenue, New York, New York 10017. That on the 27th day of December, 1974, deponent served the within Appendix upon each of the attorneys listed on the cover of the within Appendix by depositing true copies of same enclosed in posted properly addressed wrappers, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.

Lon Bennett

LON BANNETT

Sworn to before me this

27th day of December, 1974

Raymond L. Fitzgerald

RAYMOND L. FITZGERALD
Notary Public, State of New York
No. 31-4503159
Qualified in New York County
Commission Expires March 30, 1978